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USA: Torture is a serious crime, not "poor judgment"

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The ICJ today deplored the decision of the US Justice Department to clear the legal architects of the US torture policy from any professional misconduct.

The decision by Associate Deputy Attorney General (ADAG) David Margolis reversed the July 2009 findings of the Office of Professional Conduct (OPR) that Bush administration legal advisers John Yoo and Jay Bybee had engaged in professional misconduct by giving advice which approved as lawful the program of "enhanced interrogation". This program consisted in clear acts of torture and ill treatment. The OPR had been poised to refer Yoo and Bybee, who is presently a US federal judge, for disciplinary action by the state regulatory authorities. The ADAG report, while affirming that the legal advisers had exercised 'poor judgement', determined that they had not breached rules of misconduct because it could not be established that they had intended to give misleading advise.

"The actions of the lawyers warrant a criminal investigation for individual responsibility for participation in a systematic policy of torture, a crime under international law. To qualify their conduct as 'poor legal judgement' ridicules fundamental notions of the rule of law", said Gerald Staberock, Director of the ICJ Global Security and Rule of Law Initiative.

"To be clear: the legal architects of the US interrogation policy provided their advice as part of a deliberate policy to legitimize and immunize from accountability interrogation practices that are nothing less than acts of torture. Yet, the US Department of Justice has set the bar so low that this serious criminal conduct does not even constitute a breach of ethics", added Gerald Staberock.

The conclusion is an affront to the many lawyers worldwide, including in government service, that often at great sacrifices strive to uphold the rule of law. The ADAG report does note that the Bar Associations of the District of Columbia and the State of Pennsylvania might yet choose to take up cases of the disciplinary proceedings in respect of John Yoo and Jay Bybee. The ICJ urges these Bar Associations to do so as a matter of urgency. However, disciplinary proceedings, while important, are no substitute for criminal accountability.

Jurisprudence from the Nuremburg era established that those who intentionally provide legal advice leading to crimes under international law may be held criminally responsible. The global community of judges and lawyers of the ICJ affirmed at its 2008 Congress that 'a lawyer who knowingly gives advice which foreseeably leads to a crime under international law shall incur civil and criminal responsibility'.

As high-level officials continue to justify the use torture during their time in office, it is imperative to address the continued impunity for international crimes. There is no alternative to an independent and comprehensive investigation into all aspects of the US torture policies. There is no rule of law without accountability.

For more information, please contact Gerald Staberock at the ICJ (+41 22 9793803 or +41 793775446).

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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